

REMARKS

Responsive to the interview with Examiner Nicolas on September 11, 2003, Applicant has amended the claims of the application in accordance with the Examiner's suggestions in order to more clearly distinguish the claims from the art of record.

Applicant wishes to thank the Examiner for the courtesy extended during the interview. Claims 1, 3-11, 13, 15, 17-22, 24, 26-28, 30-38 have been amended. Claims 2, 12, 16, 23, and 25 have been canceled and claims 14 and 39 have been withdrawn from consideration. Claims 1, 3-11, 13, 15, 17-22, 24, and 26-38 are currently pending.

In the Office Action, claims 1-4, 6-8, 12, 15-27, 29-30, and 34-37 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,156,299 to DeCaluwe et al. ("DeCaluwe") in view of U.S. Patent No. 6,039,213 to Sloan et al. ("Sloan"). Independent claim 1 as amended is directed to "a refillable container for a selected liquid substance poured therein for select discharge therefrom, said refillable container comprising a vessel of known volume adapted for holding a volume of poured liquid substance therein; a discharge assembly adapted for select discharge of quantities of the liquid substance poured into said refillable container; a refill assembly comprising a portion of said refillable container adapted for facilitating the poured filling of said refillable container with said selected liquid substance, said refill assembly being constructed with a diameter larger than that of said discharge assembly and sufficiently large to facilitate the receipt of the selected poured liquid substance therethrough to therein facilitate ease in the poured filling of said refillable container with said selected liquid substance, said selected liquid substance being in physical contact with said refillable container; and means for identifying the selected poured liquid substance contained within the said refillable container, wherein said means for identifying comprises a label disposed upon said refillable container for the placement of indicia by a consumer for the identification of the contents thereof." Applicant respectfully submits that claim 1 as amended distinguishes over DeCaluwe in view of Sloan.

DeCaluwe describes a pump-type dispenser package including a rigid outer container equipped with a dispenser head. The package further includes a flexible disposable recharge for housing a fluid product. The flexible disposable recharge is connected to the dispenser head by a connecting piece so that the fluid product can be dispensed from the dispenser head. However, Applicant submits that DeCaluwe fails to teach or suggest at least the features of claim 1 of “a refill assembly comprising a portion of said refillable container adapted for facilitating the poured filling of said refillable container with said selected liquid substance, said refill assembly being constructed with a diameter larger than that of said discharge assembly and sufficiently large to facilitate the receipt of the selected poured liquid substance therethrough to therein facilitate ease in the poured filling of said refillable container with said selected liquid substance, said selected liquid substance being in physical contact with said refillable container.” In order to refill the pump-type dispenser package of DeCaluwe, the outer rigid container body is separated into two halves so that a replacement flexible disposable recharge can be inserted and attached through the connecting piece (see column 4, lines 47-60 of DeCaluwe). Applicant submits that DeCaluwe fails to teach or suggest that the fluid product can be poured into the rigid outer container or that the fluid product is in physical contact with the container.

The Office Action refers to label 44 shown in Figure 5 of Sloan as teaching “the use of having a means for identifying a substance within a container...”, and alleges that “it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teaching of Sloan et al. onto the invention of DeCaluwe et al. as such, in order to provide a label posted on the container indicating the type of materials within the container, as taught by Sloan et al.” Column 10, lines 26-29 of Sloan describes that the label 44 can be used to “give information about the product, make advertisements, make warnings, and so forth.” Applicant submits that there is no teaching or suggestion by Sloan that the label may be used for the placement of indicia by a consumer for the identification of the contents thereof as found in claim 1 as amended. For at least the

foregoing reasons, Applicant respectfully submits that claim 1 distinguishes over DeCaluwe in view of Sloan and requests that the 35 U.S.C. 103(a) rejection of claim 1 be withdrawn.

Independent claim 22 as amended is directed to “a refillable container for holding a volume of liquid substance poured therein for select discharge therefrom, said refillable container comprising: a first bottle body portion adapted for poured receipt of a liquid substance poured therein and having a refill orifice of a first size sufficiently large to facilitate the poured filling of said refillable container; a second bottle body portion forming a refill-discharge cap assembly adapted for mated engagement with and securement to said first bottle body portion for facilitating ease in the poured filling of said first bottle body portion with said liquid substance, said liquid substance being in physical contact with said first bottle body portion, and facilitating selective discharge therefrom, said refill-discharge cap assembly including a discharge orifice of a second size, said second size being substantially smaller than the first size of said refill orifice of said first bottle body portion.” Applicant respectfully submits that claim 22 as amended distinguishes over DeCaluwe in view of Sloan.

As discussed in regard to claim 1, in order to refill the pump-type dispenser package of DeCaluwe, the outer rigid container body is separated into two halves so that a replacement flexible disposable recharge can be inserted and attached through the connecting piece (see column 4, lines 47-60 of DeCaluwe). Applicant submits that DeCaluwe fails to teach or suggest that the fluid product can be poured into the rigid outer container. Applicant notes that the feature of a “means for identifying” for which the Office Action relies upon the teachings of Sloan is not found in claim 22. For at least the foregoing reasons, Applicant respectfully submits that claim 22 distinguishes over DeCaluwe in view of Sloan, and requests that the 35 U.S.C. 103(a) rejection of claim 22 be withdrawn.

Independent claim 34 as amended is directed to “a refillable container for a liquid substance poured therein for select discharge therefrom, said refillable container comprising: a vessel of known volume adapted for holding a volume of liquid substance therein; a discharge assembly having a discharge orifice of a first size adapted for select discharge of quantities of the liquid substance poured into said refillable container; a refill assembly having a refill orifice of a second size and comprising a portion of said refillable container adapted for facilitating the poured filling of said container with said liquid substance, said refill assembly sufficiently large to facilitate the receipt of the poured liquid substance therethrough to therein facilitate ease in the poured filling of said refillable container with said liquid substance, said liquid substance being in physical contact with said refillable container; and said second orifice being larger than said first orifice of said refillable container.

As discussed in regard to claim 1, in order to refill the pump-type dispenser package of DeCaluwe, the outer rigid container body is separated into two halves so that a replacement flexible disposable recharge can be inserted and attached through the connecting piece (see column 4, lines 47-60 of DeCaluwe). Applicant submits that DeCaluwe fails to teach or suggest that the fluid product can be poured into the rigid outer container. Applicant notes that the feature of a “means for identifying” for which the Office Action relies upon the teachings of Sloan is not found in claim 34. For at least the foregoing reasons, Applicant respectfully submits that claim 34 distinguishes over DeCaluwe in view of Sloan, and requests that the 35 U.S.C. 103(a) rejection of claim 34 be withdrawn.

Claims 3, 6-8, 13, 15, 17-21, 24, 26-27, 29-30, and 35-37 are dependent upon and include the limitations of their respective independent claims 1, 22, and 34. Therefore, Applicant respectfully submits that claims 3, 6-8, 13, 15, 17-21, 24, 26-27, 29-30, and 35-37 also distinguish over DeCaluwe in view of Sloan, and request that the 35 U.S.C. 103(a) rejection of claims 3, 6-8, 13, 15, 17-21, 24, 26-27, 29-30, and 35-37 be withdrawn.

Claims 5, 28, and 38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over DeCaluwe in view of Sloan, as applied to claims 2, 22, and 34 above, and further in view of U.S. Patent Application Publication No. US 2001/0022204 A1 to Klima Jr. et al. (“Klima”). Claims 5, 28, and 38 are dependent upon and include the limitations of claims 1, 22, and 34, respectively. As discussed hereinabove, claims 1, 22, and 34 are believed to distinguish over DeCaluwe in view of Sloan. Applicant submits that Klima fails to cure the deficiencies of DeCaluwe and Sloan. Therefore, Applicant respectfully submits that claims 5, 28, and 38 distinguish over DeCaluwe in view of Sloan and further in view of Klima, and requests that the 35 U.S.C. 103(a) rejection of claims 5, 28, and 38 be withdrawn.

Claims 9-10 and 31-32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over DeCaluwe in view of Sloan, as applied to claims 1 and 22 above, and further in view of U.S. Patent No. 5,301,845 to Labonte (“Labonte”). Claims 9-10 and 31-32 are dependent upon and include the limitations of claims 1 and 22, respectively. As discussed hereinabove, claims 1 and 22 are believed to distinguish over DeCaluwe in view of Sloan. Applicant submits that Labonte fails to cure the deficiencies of DeCaluwe and Sloan. Therefore, Applicant respectfully submits that claims 9-10 and 31-32 distinguish over DeCaluwe in view of Sloan and further in view of Labonte, and requests that the 35 U.S.C. 103(a) rejection of claims 9-10 and 31-32 be withdrawn.

Claims 11 and 33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over DeCaluwe in view of Sloan, as applied to claims 1 and 25 above, and further in view of U.S. Patent No. 5,265,769 to Wilson (“Wilson”). Claims 11 and 33 are dependent upon and include the limitations of claims 1 and 22, respectively. As discussed hereinabove, claims 1 and 22 are believed to distinguish over DeCaluwe in view of Sloan. Applicant submits that Wilson fails to cure the deficiencies of DeCaluwe and Sloan. Therefore, Applicant respectfully submits that claims 11 and 33 distinguish over DeCaluwe in view of Sloan and further in view of Wilson, and requests that the 35 U.S.C. 103(a) rejection of claims 11 and 33 be withdrawn.

Claims 1, 12, and 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over DeCaluwe in view of U.S. Patent No. 5,664,704 to Meadows et al. (“Meadows”). As discussed hereinabove with respect to independent claim 1, Applicant submits that DeCaluwe fails to teach or suggest at least the features of claim 1 of “a refill assembly comprising a portion of said refillable container adapted for facilitating the poured filling of said refillable container with said selected liquid substance, said refill assembly being constructed with a diameter larger than that of said discharge assembly and sufficiently large to facilitate the receipt of the selected poured liquid substance therethrough to therein facilitate ease in the poured filling of said refillable container with said selected liquid substance, said selected liquid substance being in physical contact with said refillable container.”

The Office Action refers to label 26 shown in Figure 2 of Meadows as teaching “the use of having a means for identifying a substance within a container...”, and alleges that “it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teaching of Meadow et al. onto the invention of DeCaluwe et al. as such, in order to provide proper identification of the container contents.” Column 4, lines 3-7 of Meadows describes that the label 26 has indicia 26 describing “contents and other pertinent information as may be required by regulator agencies.” Applicant submits that there is no teaching or suggestion by Meadows that the label may be used for the placement of indicia by a consumer for the identification of the contents thereof as found in claim 1 as amended. For at least the foregoing reasons, Applicant respectfully submits that claim 1 distinguishes over DeCaluwe in view of Meadows and requests that the 35 U.S.C. 103(a) rejection of claim 1 be withdrawn.

Claim 13 is dependent upon and include the limitations of independent claim 1. Therefore, Applicant respectfully submits that claim 13 also distinguishes over DeCaluwe in view of Meadows, and request that the 35 U.S.C. 103(a) rejection of claim 13 be withdrawn.

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, such a notice is respectfully requested.

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Respectfully submitted,

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